

ON 3/18/2019

By /s/ Marcela Enriquez
Deputy Clerk

1 James A. Murphy – 062223

JMurphy@mpbf.com

2 James A. Lassart – 40913

JLassart@mpbf.com

3 Joseph S. Leveroni – 304721

JLeveroni@mpbf.com

4 MURPHY, PEARSON, BRADLEY & FEENEY

5 88 Kearny Street, 10th Floor

San Francisco, CA 94108-5530

6 Telephone: (415) 788-1900

7 Facsimile: (415) 393-8087

8 Attorneys for Plaintiff's Counsel

David S. Godkin (admitted *pro hac vice*)

9 James E. Kruzer (admitted *pro hac vice*)

Birnbaum & Godkin, LLP

10 280 Summer Street

11 Boston, MA 02210

Telephone: (617) 307-6100

12 Facsimile: (617) 307-6101

godkin@birnbaumgodkin.com

13 kruzer@birnbaumgodkin.com

14
15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF SAN MATEO

17 SIX4THREE, LLC, a Delaware limited
18 liability company;

19 Plaintiff,

20 v.

21 FACEBOOK, INC., a Delaware
22 corporation;
23 MARK ZUCKERBERG, an individual;
24 CHRISTOPHER COX, an individual;
25 JAVIER OLIVAN, an individual;
26 SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
27 ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,

28 Defendants.

Case No. CIV 533328

Assigned For All Purposes To
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN
RESPONSE TO CMO NO. 19
REDACTED FOR PUBLIC FILING**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

1 I, David S. Godkin, declare:

2 1. I am a partner at the law firm of Birnbaum & Godkin, LLP, counsel of record for
3 Plaintiff Six4Three, I.L.C. ("643") in this case. I make this Declaration from personal
4 knowledge, and if called to testify, I could and would competently testify thereto.

5 2. Case Management Order no. 19, ¶4 directs that I serve a declaration "clarifying
6 his or any person's, whether employed, consulted, retained, volunteered, affiliated or associated
7 with Birnbaum & Godkin, LLP, compliance with Paragraph 6 [of the Protective Order] by 'not
8 reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to
9 receive such information.'" This declaration is being served pursuant to that Order.

10 3. My firm has stored and maintained Facebook's confidential information on a
11 password-protected document hosting platform (Redacted) and on the firm's secure server.

12 4. Only firm employees have access to the firm's secure server.

13 5. Thomas Scaramellino assisted with the litigation as an outside member of the
14 legal team. He was not given access to the firm's secure server. Mr. Scaramellino reviewed the
15 Stipulated Protective Order and blank certification. He then executed the Protective Order
16 certification on December 1, 2016. A copy of Mr. Scaramellino's executed certification is
17 attached hereto as Exhibit A. Because Mr. Scaramellino was not employed by the firm, and
18 was an investor in Six4Three, I required that he execute the Protective Order certification before
19 giving him access to Facebook's confidential information. Initially Mr. Scaramellino was given
20 access to Facebook's confidential documents but not highly confidential documents. Therefore,
21 Mr. Scaramellino struck out "Highly Confidential Information" on the certification that he
22 executed. After he executed the certification, Mr. Scaramellino was given access to the
23 confidential files on the document hosting platform. As the litigation progressed, I required Mr.
24 Scaramellino's assistance with preparation of deposition outlines and pleadings that included
25 Facebook's highly confidential documents as well as confidential documents. In addition, the
26 Court had placed no restrictions on Mr. Scaramellino's involvement as a member of the legal
27 team. I therefore permitted Mr. Scaramellino to access Facebook's highly confidential
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1 documents. Mr. Scaramellino understood that strict compliance with the Protective Order was
2 required.

3 6. From time to time, I determined that it was necessary for the prosecution of the
4 litigation to share Facebook's confidential information with Six4Three's Managing Director,
5 Ted Kramer, and therefore my firm and the legal team disclosed Facebook confidential
6 information to him. However, all members of the legal team dealing with Mr. Kramer
7 understood that he could not have access to highly confidential information. As an officer of a
8 party to the litigation, Mr. Kramer was not required to execute the Protective Order certification.

9 7. My firm engaged [Redacted] on January 6, 2017 to review Facebook's
10 documents to assist us in identifying potential deposition and trial witnesses. We provided the
11 Stipulated Protective Order and blank certification to [Redacted] on January 6, 2017, and she
12 executed the certification on the same date. A copy of [Redacted] executed certification is
13 attached hereto as Exhibit B. After she executed the certification, [Redacted] was granted access
14 to Facebook's confidential and highly confidential information. [Redacted] was granted access
15 to the Relativity document hosting platform. [Redacted] has affirmed that she revealed and
16 discussed Facebook's confidential and highly confidential information only with me, Mr.
17 Kruzer, and Mr. Scaramellino. She has affirmed that she stored and maintained Facebook's
18 confidential and highly confidential information in a secure location. I terminated [Redacted]
19 engagement with my firm in early January, 2019, and asked her to return or destroy all of
20 Facebook's confidential and highly confidential information. On January 24, 2019, [Redacted]
21 confirmed to me that she had returned and destroyed all of Facebook's confidential and highly
22 confidential information between January 4, 2019 and January 24, 2019. A copy of [Redacted]
23 declaration ordered in Case Management Order No. 19 is attached hereto as Exhibit C.

24 8. My firm engaged [Redacted] to assist the legal team with analysis of
25 Facebook's privilege logs. [Redacted] was provided the Stipulated Protective Order and blank
26 certification in early August, 2017, and he executed the certification on August 4, 2017. A copy
27 of [Redacted] executed certification is attached hereto as Exhibit D. My firm did not provide
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1 [Redacted] with any Facebook confidential or highly confidential information. To the best of
2 my knowledge, the only member of Six4Three's legal team who communicated with [Redacted]
3 [Redacted] Mr. Scaramellino, and [Redacted] involvement was limited to the analysis of
4 Facebook's privilege logs.

5 9. My firm engaged [Redacted] to assist us in reviewing Facebook's
6 arguments related to digital privacy issues. We provided a copy of the Stipulated Protective
7 Order and blank certification to [Redacted] on May 10, 2018. He executed the certification on
8 May 14, 2018. A copy of [Redacted] executed certification is attached hereto as Exhibit E.
9 My firm provided Facebook confidential and highly confidential information to him in May and
10 June, 2018, after he executed the certification. I terminated my firm's engagement with [Redacted]
11 [Redacted] in early January, 2019, and directed him to return or destroy all Facebook confidential
12 information that he had in his possession, including all documents referring to Facebook's
13 confidential documents, and to confirm that he had done so. On January 11, 2019, [Redacted]
14 confirmed in writing that he had deleted all of Facebook's documents, and asked if he should
15 also destroy reports and filings referring to Facebook's confidential information. In response, I
16 instructed him to destroy everything referring to Facebook's confidential information.

17 10. I am not able to comply with ¶3 of Case Management Order No. 19 directing
18 Six4Three to serve a verified declaration of Mr. Dehaye despite good faith efforts to do so, as
19 follows. As set forth above, I terminated my firm's engagement with [Redacted] in January,
20 2019, so he has no current relationship with my firm. On March 1, 2019, after receiving Case
21 Management Order No. 19, I informed [Redacted] by email that the Court had ordered him to
22 provide a verified declaration by March 5, 2019. I sent him a draft declaration on March 3,
23 2019 for his review. Later in the day on March 4, 2019, I received an email from Mr. Ravi
24 Naik, an attorney with a London law firm Irvine, Thanvi, Natas Solicitors, informing me that his
25 firm has been instructed by [Redacted], and asking me to provide Case Management Order no.
26 19 to him. I sent the Order and my February 28, 2019 declaration to Mr. Naik shortly
27 thereafter. On March 4, 2019, Mr. Naik sent another email asking me to provide Facebook's ex
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1 *parte* application and any related documents. I sent him Facebook's application and other
2 papers submitted regarding Facebook's application shortly thereafter. Having no response from
3 Mr. Naik or [Redacted], I emailed Mr. Naik again this morning asking him whether [Redacted]
4 [Redacted] would provide a declaration in compliance with the Order. As of the time I executed
5 this Declaration, I have not received a declaration of [Redacted]. I did, however, receive
6 correspondence sent from Mr. Naik to Facebook's counsel, Ms. Mehta, at 2:42 p.m. EST today,
7 which I have attached as Exhibit F. Mr. Naik's letter to Ms. Mehta confirms that [Redacted]
8 deleted all Facebook confidential and highly confidential documents he was provided including
9 internal case summaries.

10 11. Case Management Order no. 19, ¶2 directs me to produce fully executed
11 Certifications of witnesses. I believe that Ali Partovi, a deposition witness, executed the
12 Protective Order certification during a break at his deposition on October 10, 2017. I have been
13 unable to locate a copy of a certification that he executed, and therefore I have not been able to
14 produce it.

15 12. To the best of my knowledge, the individuals identified above are the only
16 persons to whom my firm provided Facebook's confidential and highly confidential
17 information, and such information was provided in conformance with the Protective Order. At
18 no time did my firm direct, authorize, condone, or otherwise sanction the release, disclosure, or
19 commentary by Mr. Kramer, Mr. Scaramellino, experts and consultants of any confidential or
20 highly confidential information to any third party. Other than the disclosure of Facebook
21 information to the DCMS Committee by Mr. Kramer in November 2018, I am not aware of any
22 such activity.

23 I declare under the penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed March 5, 2019 at Boston, Massachusetts.

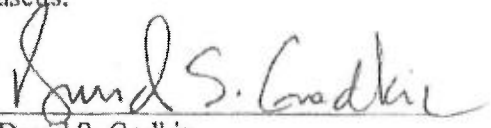
26 
27 David S. Godkin
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EXHIBIT A

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information ~~or Highly Confidential Information~~ to anyone, except as allowed by the Order. I will maintain all such Confidential Information ~~or Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information ~~or Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information ~~or Highly Confidential Information~~. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Pthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 1st day of December, 2016, at 9:00AM.

By: [Redacted]

Address: [RedactedRedacted]

[Redacted]

Phone: [Redacted]

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT B

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis of Criterion Law located at the address of 2225 E. Bayshore Road, Palo Alto CA 94303 as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 6 day of January, 2017, at 4:30pm.

By: **Redacted**

Address: **Redacted**

Redacted

Phone: **Redacted**

EXHIBIT C

1 James A. Murphy – 062223

JMurphy@mpbf.com

2 James A. Lassart – 40913

JLassart@mpbf.com

3 Joseph S. Leveroni – 304721

JLeveroni@mpbf.com

4 MURPHY, PEARSON, BRADLEY & FEENEY

88 Kearny Street, 10th Floor

5 San Francisco, CA 94108-5530

Telephone: (415) 788-1900

6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel

David S. Godkin (admitted *pro hac vice*)

8 James E. Kruzer (admitted *pro hac vice*)

Birnbaum & Godkin, LLP

9 280 Summer Street

Boston, MA 02210

10 Telephone: (617) 307-6100

Facsimile: (617) 307-6101

11 godkin@birnbaumgodkin.com

kruzer@birnbaumgodkin.com

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company;

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation;

19 MARK ZUCKERBERG, an individual;

20 CHRISTOPHER COX, an individual;

21 JAVIER OLIVAN, an individual;

SAMUEL LESSIN, an individual;

22 MICHAEL VERNAL, an individual;

ILYA SUKHAR, an individual; and

23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. CIV 533328

Assigned For All Purposes To

Hon. V. Raymond Swope, Department 23

DECLARATION OF Redacted

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

1 I, [Redacted], declare:

2 1. I am over the age of 18. I make the following statements in response to Case
3 Management Order No. 19, ¶3. I make this Declaration from personal knowledge, and if called to
4 testify, I could and would competently testify thereto.

5 2. I received a copy of the Stipulated Protective Order and blank certification in this action
6 on January 6, 2017.

7 3. I executed the certification on January 6, 2017.

8 4. I was able to access Facebook's confidential and highly confidential information after I
9 executed the certification on January 6, 2017.

10 5. I have not revealed Facebook's confidential or highly confidential information to
11 anyone other than Six4Three's counsel (David S. Godkin and James Kruzer) and Thomas
12 Scaramellino, who I understood was working with Mr. Godkin's firm as part of Six4Three's legal
13 team. I have not discussed Facebook's confidential or highly confidential information with anyone
14 other than Six4Three's counsel and Mr. Scaramellino. As used herein, "Facebook's confidential or
15 highly confidential information" includes all information copied or extracted from or reflecting the
16 confidential or highly confidential information, all copies, excerpts, summaries or compilations of
17 confidential or highly confidential information, and any testimony, conversations or presentations by
18 parties or their counsel that might reveal confidential or highly confidential information. I stored and
19 maintained Facebook's confidential and highly confidential information in a secure location.

20 6. I returned to Mr. Godkin's firm and destroyed all Facebook confidential and highly
21 confidential information in my custody or control between January 4, 2019 and January 24, 2019.

22 7. I confirmed to Mr. Godkin my return and destruction of all Facebook confidential and
23 highly confidential information on January 24, 2019. I no longer have access to any Facebook
24 confidential and highly confidential information.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed March 4, 2019 at Redacted
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5 Redacted
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EXHIBIT D

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 4 day of August, 2016, at 16:11 EST.

By: [Redacted]
Address: [Redacted]
Phone: [Redacted]

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STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT E

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Stuart G. Gross of Klein & Gross LLP located at the address of The Embarcadero, Pier 9, Suite 100, SF, CA 94111 as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 14th day of May 2018 ~~XXXX~~ at Redacted

Redacted

Redacted

Address:

Redacted

Redacted

Phone:

Redacted

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT F

REDACTED FOR PUBLIC FILING

CERTIFICATE OF SERVICE

I, Jennifer Cuellar, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On March 18, 2019, I served the following document(s) on the parties in the within action:

DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19 REDACTED FOR PUBLIC FILING

SUPPLEMENTAL DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19 REDACTED FOR PUBLIC FILING

DECLARATION OF REDACTED, REDACTED FOR PUBLIC FILING

X

VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.

Six4Three, LLC
1267 Chestnut Street, Apt. 6
San Francisco, CA 94109

Six4Three, LLC
2098 8th Avenue, 51
New York, NY 10026

Superior Court of California County of San Mateo
Department 23
400 County Center
Redwood City, CA 94063

X

VIA E-MAIL: I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately _____ AM/PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is jcuellar@mpbf.com

Computer Law Group, LLP
401 Florence Street
Palo Alto, CA 94301
Email: jrusso@computerlaw.com
csargent@computerlaw.com

Attorneys for Theodore Kramer and Thomas Scaramellino

Theodore Kramer
Email: Theodore.kramer@protonmail.com

1 Donald P. Sullivan
2 WILSON ELSE
3 525 Market Street, 17th Floor
4 San Francisco, CA 94105
5 Donald.sullivan@wilsonelser.com

Attorneys for Gross & Klein LLP

6 Steven J. Bolotin
7 MORRISON MAHONEY LLP
8 250 Summer Street
9 Boston, MA 02210
10 sbolotin@morrisonmahoney.com

Attorney for Birnbaum & Godkin LLP

11 Joshua H. Lerner - jlerner@durietangri.com
12 Sonal N. Mehta - SMehta@durietangri.com
13 Laura Miller - LMiller@durietangri.com
14 Catherine Kim - ckim@durietangri.com
15 Durie Tangri
16 217 Leidesdorff Street
17 San Francisco, CA 94111
18 Email: SERVICE-SIX4THREE@durietangri.com

Attorneys for Facebook, Inc.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 a true and correct statement and that this Certificate was executed on March 18, 2019.

21 By 
22 Jennifer Cuellar